

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 992
(UPS Ground Freight, Inc.)

Case No. 5-CB-132184

and

RONALD WHARTON,
An Individual

Daniel M. Heltzer, Esq. for the General Counsel.
for the Respondent.

Jonathan G. Axelrod, Esq., (Beins, Axelrod, P.C., Washington, D.C.)
for the Respondent.

DECISION

STATEMENT OF THE CASE

Arthur J. Amchan, Administrative Law Judge. This case was tried in Hagerstown, Maryland on October 28, 2014. Ronald Wharton, the Charging Party, filed the charge on July 7, 2014. The General Counsel issued the complaint on July 31, 2014.

The General Counsel alleges that Respondent, Teamsters Local 992, by Business Agent Robert Fahnestock violated Section 8(b)(1)(A) of the Act by threatening the Charging Party, Ronald Wharton, with internal union charges, if he testified on behalf of his employer in an arbitration proceeding. This February 20, 2014 arbitration proceeding involved the discharge of a fellow employee at UPS Ground Freight, Gene Longworth.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

Findings of Fact

I. JURISDICTION

The Employer, UPS Ground Freight, is a corporation, engaged in the intrastate and interstate transportation of freight. It maintains a terminal in Williamsport, Maryland and

performs services valued in excess of \$50,000 outside of the State of Maryland. UPS Ground Freight is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and the Union, International Brotherhood of Teamsters Local 992, is a labor organization within the meaning of Section 2(5) of the Act.

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II. ALLEGED UNFAIR LABOR PRACTICES

The Charging Party, Ronald Wharton, is a truck driver for UPS Ground Freight. He generally hauls freight from the UPS terminal in Williamsport, Maryland to Philadelphia and back. He is a member of the bargaining unit represented by Teamsters Local 992 and at one time was a union steward. Sometime prior to January 2014, Wharton resigned his position as union steward.

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On January 14, 2014, Wharton allegedly had one or two altercations or confrontations with fellow employee and union member Gene Longworth. On or about January 24, 2014, UPS Ground Freight discharged Longworth as a result of these alleged incidents.

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The Union filed a grievance over Longworth's termination. This grievance was docketed to be heard in an employer-union arbitration scheduled for February 20, 2014 at the Omni hotel in Richmond, Virginia. On February 20, UPS terminal manager, Benjamin Campbell called Ronald Wharton and asked him to go to Richmond to testify in the Longworth arbitration.

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Wharton drove to Richmond and was met by UPS labor relations manager Robert Cowie. Cowie and Wharton then proceeded towards the meeting rooms in which the arbitration sessions were being conducted. In the hallway on the way to these rooms, Cowie and Wharton passed a number of union officials, including business agent Robert Fahnestock.

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Fahnestock indicated to Wharton that he wanted to speak to him.¹ Cowie went on his way while Fahnestock spoke to Wharton. Fahnestock either told Wharton that internal union charges might be filed against him if he testified for the employer in the Longworth arbitration (passive voice) or that he or the Union might file such charges (active voice). I conclude it makes no difference, so I will assume that the statement was made in the passive voice. In either case, Fahnestock's intent was to discourage Wharton from testifying, and/or to indicate that there might be adverse consequences if he did so.

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The Longworth arbitration was not heard on February 20. It was apparently heard in May 2014. Wharton did not testify on behalf of UPS in May. Longworth has not been reinstated to his employment by UPS Freight.

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On March 10, 2014, the Union notified Wharton by certified mail that steward Jeff Atkinson and Gene Longworth had brought internal union charges against him. He was informed that a hearing would be conducted on those charges on April 13. Attached to the certified letter was a letter dated February 10, 2014, signed by Steward Atkinson. The letter

¹ There is contradictory testimony as to whether Fahenstock touched Wharton. The parties have stipulated that he did not do so in a violent matter. I find that whether he touched Wharton or not is irrelevant to any issue in this case.

accused Wharton of bullying union members and conspiring with management in the termination of Gene Longworth. It did not reference Wharton's presence at the Omni on February 20 or his intention to testify in the arbitration proceeding.²

It is unclear when the February 10 letter was presented to higher officials in the Union, but this was done prior to February 24.³ The Union's Executive Board apparently agreed to pursue these charges against Wharton on March 9. The April 13 hearing was postponed and no hearing on the union charges had been conducted as of October 28, 2014.

Analysis

There is little in the way of disputed relevant evidence in this case. The issue herein is simply whether the Union violated Section 8(b)(1)(A) in attempting to discourage Ronald Wharton from testifying in the Longworth arbitration.

At first blush it would appear that the Union clearly violated the Act pursuant to Board precedent. The Board has long held, as a general proposition, that a Union violates Section 8(b)(1)(A) in disciplining an employee for testifying adverse to it in an arbitration proceeding, *Freight Drivers and Helpers Loc. Un. No. 557*, 218 NLRB 1117, 1120 (1975). In *Graphic Communications Local 388M (Georgia Pacific)*, 300 NLRB 1071, 1072-73 (1990), the Board held that a union violates Section 8(b)(1)(A) by disciplining members for appearing and testifying in arbitration proceedings in a manner contrary to the interests of other employees—unless the Union has objective evidence of perjury. The Board's decision in *Oil Workers Local 7-103 (DAP, Inc.)* 269 NLRB 129, 130-31 (1984) leads me to the conclusion that any restraint or coercion of members at any stage of the grievance and arbitration process violates the Act. Fahnestock's comments to Wharton were clearly intended to discourage and coerce him from testifying in the Longworth arbitration.

These decisions are predicated on the doctrine that grievance and arbitration procedures are a fundamental component of national labor policy. When the Board defers to the grievance and arbitration process under the *Collyer* doctrine (*Collyer Insulated Wire*, 192 NLRB 837 (1971)), those procedures take the place of the Board's processes. Thus, one cannot argue with the Board's statement in *Graphic Communications*, that, "it is essential to the integrity of these processes that witnesses feel free to testify before an arbitrator without fear of reprisal from either the employer or the union." The cases cited above have not been overruled and would seem to be dispositive of this case were it not for the Board's subsequent decision in *Office Employees Local 251 (Sandia National Laboratories)*, 331 NLRB 1417 (2001).

² I find the discussion regarding Atkinson's status in Respondent's brief to be irrelevant to any issue in this case. The General Counsel has not alleged that the Union by Atkinson committed an unfair labor practice. The General Counsel's allegations are limited to Fahnestock's conversation with Wharton on February 20, 2014. I also find the fact that Atkinson filed internal union charges against Wharton to be irrelevant to this matter. These charges do not reference Wharton's testimony at an arbitration proceeding.

³ R. Exh. 3, the February 10, 2014 letter states that it was hand delivered, but does not say when it was hand delivered. Fahnestock testified that the letter was delivered to Thomas Krause, Secretary/Treasurer of the Union on February 10. However, there isn't any non-hearsay evidence that this is so.

Stated most broadly, the *Office Employees* decision stands for the proposition that a union violates Section 8(b)(1)(A) only when there is a nexus to the employee-employer relationship and a violation of the rights and obligations of employees under the Act. However, the Board recognized that the Supreme Court in *NLRB v. Shipbuilders*, 391 U.S. 418 (1968) ruled that a union could not unduly hamper the ability of its members to bring a matter to the Board for its consideration.

The General Counsel has not alleged that Fahnestock's warning threatened Wharton's employment status with UPS Freight. Thus, the issue is whether in the absence of such a threat to Wharton's employment status, the Union, by Fahnestock, violated Section 8(b)(1)(A).

Unlike the *Office Employees* case, this matter does implicate policies specific to the National Labor Relations Act. By impairing access to the arbitration process, Respondent compromised a procedure which is often a substitute for the Board's processes. Indeed, the Board specifically said as much in *Cannery Warehousemen, Local Union 788*, 190 NLRB 24, 26-27 (1971). Thus, I conclude that the *Office Employees* case has no bearing on the instant matter. Fahnestock violated the Act by trying to discourage Wharton from appearing on behalf of the employer in the Longworth arbitration.

I reject Respondent's argument that Fahnestock did not violate the Act because he was trying to protect Wharton. Respondent in its brief argues that Fahnestock reasonably believed that Atkinson and/or Longworth would file a charge against Wharton if he testified on February 20. There is no basis for this contention. There is no evidence that either Atkinson or Longworth indicated to Fahnestock that they would file an internal union charge or another internal charge against Wharton if he testified in the arbitration.

Fahnestock did not tell Wharton that Atkinson and Longworth had already filed a charge against him—assuming that this was the case and that Fahnestock was aware of the letter dated February 10. Indeed, Fahnestock testified that on February 20, he “may have been known” that Atkinson and Longworth had already filed charges; not that he knew that they had done so. Moreover, Fahnestock, as a union agent, is charged with the responsibility of knowing that the Union could not lawfully process charges against Wharton for testifying in the Longworth arbitration.

Conclusion of Law

Respondent, the International Brotherhood of Teamsters, Local 992, violated Section 8(b)(1)(A) of the Act by threatening or implying that Ronald Wharton could be brought up on internal union charges if he testified for his employer in an arbitration proceeding on February 20, 2014.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

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ORDER

The Respondent, the International Brotherhood of Teamsters, Local 992, its officers, agents, and representatives, shall

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1. Cease and desist from

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(a) Restraining and coercing employees in the exercise of the rights guaranteed by Section 7 of the Act, by threatening or implying that an employee could be brought up on internal union charges for testifying on behalf of an employer in an arbitration proceeding.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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2. Take the following affirmative action necessary to effectuate the policies of the Act.

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(a) Within 14 days after service by the Region, post at its business office and other places where notices to its members are customarily posted, including any bulletin board it may be allowed to use at the UPS Ground Freight terminal in Williamsport, Maryland, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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(b) Sign and return to the Regional Director sufficient copies of the notice for physical and/or electronic posting by UPS Ground Freight, if willing, at all places or in the same manner as notices to employees are customarily posted.

⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., December 11, 2014.

Arthur J. Amchan
Administrative Law Judge

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT threaten or imply that you will be brought up on internal union charges if you testify in an arbitration proceeding or otherwise participate in a grievance or arbitration proceeding on behalf of an employer contrary to the interest of a fellow union member.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

International Brotherhood of Teamsters, Local 992

(Labor Organization)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Bank of America Center, Tower II, 100 S. Charles Street, Ste 600, Baltimore, MD 21201-4061
(410) 962-2822, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/05-CB-132184 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (410) 962-2864.